

**LOUDOUN VALLEY ESTATES II  
ZMAP 2002-0011**

**PROFFER STATEMENT**

**March 9, 2004**

Pursuant to Section 15.2-2303, Code of Virginia (1950), as amended, and Section 6-1209 of the Loudoun County Zoning Ordinance (1993), as amended (the "Zoning Ordinance"), Loudoun Valley Associates, L.P., (the "Applicant"), Toll VA, L.P., and Loudoun Valley Estates HOA (collectively, the "Owner"), the undersigned Owner of the property identified as Loudoun County Tax Map references Map 92, Parcels 18, 19, 20 and 23, and Map 92C ((9)) B through H, J, 20 through 44, and 89 through 105 (the "Property") and further identified on the Existing Conditions/Rezoning Plat (Sheet 11 of the Concept Development Plan) and in Exhibit D, on behalf of itself and its successors in interest, hereby voluntarily proffers that the development of the Property subject to ZMAP 2002-0011 shall be in substantial conformity with the proffers as set forth below.

All proffers made herein are contingent upon approval of (i) ZMAP 2002-0011 and the rezoning of the Property to the Planned Development-Housing ("PD-H4") zoning classification under the Zoning Ordinance, including the requested modifications of Section 3-502, Section 3-506(C)(1)(b), Section 3-511(A), Section 3-602, Section 3-610(A), and Section 7-803(C)(1)(b) of the Zoning Ordinance as provided in Exhibit B, and (ii) the Concept Development Plan, as defined below.

**I. CONCEPT DEVELOPMENT PLAN**

The development of the Property shall be in substantial conformity with the Concept Development Plan (the "CDP") (included by reference as Exhibit A), identified as Sheets 2, 4, 6 through 8, 10 and 11 (exclusive of the noted illustratives and typical sections) of the Loudoun Valley Estates II Zoning Map Amendment plans dated April 26, 2002, and revised through March 4, 2004, prepared by Bowman Consulting Group, Ltd. (the "Rezoning Plans"). Minor adjustments to the locations of the proposed uses, facilities and improvements shown on the CDP shall be permitted to address grading, drainage, environmental, cultural and natural features, development ordinance requirements, and other final engineering considerations, and to accommodate the recommendations of archaeological studies.

**II. DEVELOPMENT SCOPE**

**A. Residential Uses**

1. Development of the Property will include a maximum of 2,861 residential units, inclusive of any required ADUs and as further described on Sheets 4 and 10 of the CDP, with related privately owned community facilities and amenities. The mix of residential units may include up to 745 single-family detached units, up to 1,121 single-family attached units and up to 995 multi-family units, with the understanding that up to 200 single-family detached units may be converted to any combination of additional single-family attached and/or multi-family units, provided that the total of 2,861 residential units is not exceeded. Affordable dwelling units

site: one small soccer field, one 200' softball field and three large soccer fields. The final mix of the playing fields may be changed at the discretion of the County, provided that the cost of the chosen mix does not exceed the cost equivalent value of the fields listed in the preceding sentence. Said fields and facilities shall be constructed to the standards of the County and shall not be lighted.

3. Middle School Option. In the event the County determines this site will be used for a middle school, the Applicant shall clear and rough grade the site and construct and outfit three large soccer fields, including an irrigation system, prior to the dedication of the site. The final mix of the playing fields may be changed at the discretion of the County, provided that the cost of the chosen mix does not exceed the cost equivalent value of three large soccer fields. Said fields and facilities shall be constructed to the standards of the County and shall not be lighted.

4. Off-Site Playing Fields. It is the Applicant's intent to construct a total of five playing fields for public use. In the event the Public School/Public Park site is used for a middle school, the Applicant shall clear, rough grade, construct and outfit to the standards of the County one small soccer field and one 200' softball field, including an irrigation system, at a public site selected by the County within a 2 mile radius of the perimeter of the Property. The final mix of the playing fields may be changed at the discretion of the County, provided that the cost of the chosen mix does not exceed the cost equivalent value of the fields listed in the preceding sentence. Depending on the availability of an off-site location, these off-site playing fields shall be constructed at the same time as, or within 1 year of, the construction of the playing fields at the middle school. In the event the County cannot locate a suitable site, the Applicant shall make a cash contribution to the County equivalent to the anticipated construction cost of these playing fields. Said contribution shall be paid within 30 days of written notification by the County that a suitable site is not available.

5. The Applicant also shall dedicate to the County a site of approximately 1 acre adjacent to the 30 acre public use site referenced above and identified as Site 2 on Sheet 4 of the CDP. The use of this site is intended for public open space and/or recreation purposes. The Applicant will clear and rough grade this site in conjunction with the clearing and grading of the adjacent 30 acre public use site, if so directed by the County.

#### **B. Broad Run Stream Valley Park and Nature Trail**

1. The Applicant shall dedicate to the County approximately 131 acres along Broad Run, as shown on Sheet 4, for the Broad Run Stream Valley Park for use as a passive public park on the west side of Broad Run, and for park, recreation and/or other public uses on the east side of Broad Run, as shown on Sheet 4. This park land shall be dedicated in sections in conjunction with the subdivision of adjacent land bays.

2. The Applicant shall construct a wood chip nature trail, approximately 4 feet wide and 10,500 feet in length, within the Broad Run Stream Valley Park. The Applicant shall work with County staff regarding the location of the trail during the subdivision review process. The trail shall be constructed in conjunction with the development of the adjacent land bays.

land dedications, improvements and other contributions will exceed the total anticipated capital facilities contribution, there shall be no per unit capital facilities contribution.

## **VII. ENVIRONMENT**

### **A. Tree Preservation**

1. The Applicant is committed to the preservation of trees throughout the Property. Sheet 7 of the CDP identifies the location of several significant tree save areas on the Property. The Applicant shall preserve the designated tree save areas (140 acres) as measured from the perimeter drip line of said areas. The Applicant shall also endeavor to preserve those areas depicted on Sheet 7 as potential tree save areas.

2. The Applicant shall design its construction plans and profiles to minimize the impact of utility and trail crossings through the designated tree save areas. To the extent that any trees within a tree save area are removed to accommodate utilities and trails, the Applicant shall mitigate such loss through the planting of appropriate native species trees of 2" to 2 1/2" caliper at a rate of 3 trees per each tree of 8" caliper or greater removed in locations to be determined by the Applicant's certified arborist, in consultation with the County.

3. The Applicant shall design its construction plans and profiles to minimize the impact of streets, utilities, storm water management facilities and trails on the potential tree save areas. The Applicant shall determine the extent of any potential tree save area to be designated as, and included in, the tree save areas and shall delineate the limits of the tree save areas on the tree conservation plans required by the Facilities Standards Manual.

### **B. General Tree Protection**

Construction plans for all permitted improvements shall clearly define the limits of clearing and all such areas shall be clearly marked in the field. Tree protection fencing shall be placed outside the drip lines along all clearing limits in forested areas prior to commencing land-disturbing activities. In the event any trees to be protected are damaged due to construction activities and need to be removed (as determined by the Applicant's certified arborist), the Applicant shall replace such trees with appropriate species, the number and location of which shall be determined by the Applicant's certified arborist or landscape architect, in consultation with the County. The Applicant reserves the right to remove, in consultation with the County, any dead, damaged, dying or diseased trees and vegetation, and any tree or vegetation that interferes with the construction, proper functioning and/or use of any street or utility or drainage easement, or creates a danger to property or persons.

### **C. Long-Term Tree Care**

The Applicant shall engage an urban forester/arborist to prepare tree management and maintenance programs for all wooded areas within common open space properties. Such programs shall be prepared and submitted for each preliminary subdivision plan application in conjunction with tree conservation plans required by the Facilities Standards Manual. Such programs shall allow the removal of any dead, damaged, dying or diseased trees and vegetation, and any tree or vegetation that interferes with the proper functioning and use of any street or utility or drainage easement, or creates a danger to property or persons. The HOA will be

Instr: 20031020-0139643 Pg: 1 OF 9  
Loudoun County, VA  
10/20/2003 3:44:22PM  
Gary M. Clemens, Clerk

**RECORDATION COVER SHEET**

TYPE OF INSTRUMENT: DEED OF OPEN SPACE EASEMENT

DATE OF INSTRUMENT: October 16, 2003.

NAMES OF GRANTORS: LVE III HOMEOWNERS ASSOCIATION, INC.

NAMES OF GRANTEEES: BOARD OF SUPERVISORS OF LOUDOUN  
COUNTY, VIRGINIA

COUNTY WHERE PROPERTY  
LOCATED: LOUDOUN

ELECTION DISTRICT WHERE  
PROPERTY LOCATED: DULLES

BRIEF DESCRIPTION  
OF PROPERTY: LOUDOUN VALLEY ESTATES, PHASE III,  
SECTION 1, PARCELS A & B

COUNTY FILE NO.:

THIS INSTRUMENT PREPARED BY: WILLIAM A. FOGARTY

RETURN TO: WALSH, COLUCCI  
2200 CLARENDON BLVD., SUITE #1300  
ARLINGTON, VA 22201

ATTACHMENT 4b

A-26

## DEED OF OPEN SPACE EASEMENT

THIS DEED OF OPEN SPACE EASEMENT, ("Deed") made this 16<sup>th</sup> day of October, 2003, between LVE III HOMEOWNERS ASSOCIATION, INC., a Virginia nonstock corporation ("Grantor") and the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, a body corporate and politic (the "County").

### WITNESSETH:

WHEREAS, Grantor is the fee simple owner of those certain tracts of land, located in Dulles Election District, Loudoun County, Virginia, described as Open Space Parcels A & B, Section 1, Loudoun Valley Estates III (the "Property"), which were conveyed to Grantor by instrument of record in the Clerk's Office of the Circuit Court of Loudoun County, Virginia, recorded contemporaneously herewith; and

WHEREAS, the Property is not subject to the lien of any deed of trust; and

WHEREAS, the Property has agricultural, scenic, natural and aesthetic value in its present state as a natural and rural area which has not been subject to development; and

WHEREAS, in furtherance of the purposes of the Open Space Land Act, Title 10.1, Chapter 17 of the Virginia Code, and as required by Section 2-507 of the Zoning Ordinance and pursuant to County Subdivision Application # SBRD 2002-0114, the Grantor is willing to grant a perpetual Open Space Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and the County is willing to accept such Easement; and

WHEREAS, the Grantor and County recognize the agricultural, scenic, natural and aesthetic value of the Property in its present state, and have, by the conveyance of an Open Space Easement to the County, a common purpose of conserving the natural and cultural values of the Property, preserving the dominant agricultural, woodland and wetland character

of the Property, and preventing the use or development of the Property for any purpose or in any manner which would conflict with the maintenance of the Property in its scenic, agricultural, woodland and wetland condition or with purposes of the Open Space Land Act; and

WHEREAS, the County is authorized by the Open Space Land Act to accept, hold, and administer Open Space Easements, and possesses the authority to accept and is willing to accept this Open Space Easement under the terms and conditions hereinafter described.

NOW, THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the County and its successors and assigns forever and in perpetuity an Open Space Easement (the "Easement") of the nature and character and to the extent hereinafter set forth over the Property, the purposes of which are to preserve the environment of the Property, as more particularly bounded and described on Plat number 1228.22017, dated 7/15/02, and revised through 8/15, 2003, entitled "Record Plat Loudoun Valley Estates III Section 1" and prepared by Eastern States Engineering of Dulles, Virginia, certified land surveyors which is attached to a Deed of Dedication, Subdivision, Easement, Conveyance, and Vacation recorded immediately prior hereto (the "Plat"), and to maintain permanently the natural and cultural values and the dominant scenic, agricultural, woodland and wetland character of the Property.

To achieve these objectives, the terms, conditions, and restrictions of this Open Space Easement are hereinafter set forth.

1. This Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable and runs with the lands as an incorporeal interest in the Property enforceable with respect to the Property by the County, against the Grantor and its successors and assigns.

2. No industrial or commercial activities, with the exception of farming, forestry and activities that can be conducted from residential or farm buildings without significant alteration of the external appearance of the buildings as initially constructed, shall be conducted on the Property. Sales by the owner of farm products to the public shall be permitted.

3. Except as related to farming, and as otherwise provided herein, no billboard or advertising material shall be erected on the Property.

4. Except as may be necessary for and accessory to the agricultural and forestry uses of the Property, there shall be no dumping of soil, trash, ashes, garbage, waste, or offensive material. There shall be no dumping or filling in of any pond, wetland or waterway except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation of trash, refuse, junk, sludge or other unsightly material is not permitted on the Property.

Notwithstanding the foregoing provisions, there shall be no dumping, storage or placement on the Property of any stumps, brush, grass or other land clearing debris from off-site.

5. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

- (a) Application of good farming and forestry practices;
- (b) Maintenance of existing accesses;
- (c) Construction and maintenance of farm accesses and accesses to structures permitted within the provisions of this Deed; provided, however, that accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Property; and
- (d) Reconstruction and extension of wetland areas in accordance with all applicable Federal, State, and County statutes, ordinances and regulations.

6. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except for:

- (a) Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted within the provisions of this Deed; or
- (b) Application of good husbandry practices including the prevention or treatment of disease; or
- (c) Periodic selective harvest of marketable timber under the supervision of a registered forester; or
- (d) Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Property.

All forestal management activities shall be in accordance with sound forestry management guidelines promulgated by the Society of American Foresters for natural forests and plantations. All forestry practices shall serve the dual purpose of:

- (i) Protecting the soils, drainage and water quality of the Property; and
- (ii) Enhancing the sustainable growth and quality of the tree species suited to the site.

7. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the primary uses of farming and forestry, the preservation of wildlife habitat.

8. No building, facility or other structure shall be erected or constructed on the Property unless such structure is a new structure which is designed, constructed and utilized in connection with and accessory to the continued agricultural, horticultural, silvicultural and naturalistic uses of the Property.

9. Development of the Property shall not be permitted except as provided in this easement.

10. The property subject to this Easement shall not be further subdivided.



11. Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to itself, its successors and assigns the right to:

- (a) Continue the agricultural, forestry and naturalistic uses of the Property.
- (b) Continue to hunt, fish or trap on the Property subject to relevant laws.
- (c) Improve, repair, restore, alter, remodel or replace the existing and permitted structures with structures of similar size and purpose provided that the changes are compatible with the conservation purposes of the Property and all other provisions of this Easement.
- (d) Continue the use of the Property for all purposes not inconsistent with this Easement.

12. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions herein contained, and therefore, in the event that the Grantor, its successors or assigns, violate or breach any of such terms, conditions and restrictions herein contained, the County, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Property to its prior condition. The County, its successors and assigns, by any prior failure to act shall not waive or forfeit, and shall not be deemed to have waived or forfeited, the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

13. The County, its successors and assigns, shall have the right, with reasonable notice, to enter the Property one time per annum for the purpose of inspecting the Property to determine whether the Grantor, or its successors, or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of the dwellings.

14. It is the intention of the parties hereto that this Easement, which is by nature and character negative in that the Grantor has restricted and limited its right to use the subject Property rather than granted any affirmative rights to the County except as otherwise set forth

herein, be construed at all times and by all parties to effectuate its terms, conditions and purposes. The County may assign its rights under this Easement to any state or federal agency charged with the responsibility of conservation of natural or farm areas, or to any non-profit, tax-exempt organization engaged in promoting conservation of farm or natural areas; and if such assignee shall be dissolved or shall abandon this easement or the rights and duties of enforcement herein set forth, or if proceedings are instituted for condemnation of this easement, the easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Court shall appoint an appropriate successor.

15. The Grantor agrees for itself, its successors and assigns to send in writing to the County the names and addresses of any parties to whom any portion of the property subject to this Easement is to be transferred at the time said transfer is executed.

16. The County agrees to hold this Easement exclusively for conservation purposes, i.e., it will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

17. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Loudoun County, and to promote the conservation purposes of this Easement.

18. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, nothing herein shall be construed to convey a right to the public of access or use of the Property, and the Grantor, its successors, and assigns shall retain exclusive right to access and use.

19. Notwithstanding any other provision of this Deed of Open Space Easement, the Loudoun County Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land.

The undersigned warrants that this Deed is made and executed pursuant to authority properly granted by the charter, bylaws and action of the Board of Directors of the Grantor.

IN WITNESS WHEREOF, the Grantor and County have hereunto set their hands and seals in the day and year above written.

GRANTOR:

**LVE III HOMEOWNERS ASSOCIATION,  
INC.**

By: [Signature] (SEAL)

Name: John T. Meagher

Title: Vice President

COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that John Meagher as Vice President of LVE III HOMEOWNERS ASSOCIATION, INC., whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 1 day of October, 2003.

My commission expires:

August 31, 2005

[Signature]  
Notary Public

Accepted pursuant to Virginia Code  
Section 15.2-1803

APPROVED AS TO FORM:

APPROVED AS TO FACTS:

A. Plowman  
Assistant County Attorney  
ASSISTANT COUNTY ATTORNEY

THE BOARD OF SUPERVISORS OF  
LOUDOUN COUNTY, VIRGINIA

By: [Signature]  
Title: Chairman

COMMONWEALTH OF VIRGINIA  
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby  
certify that Scott K. York as Chairman  
of the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, whose name  
is signed to the foregoing Deed, appeared before me and personally acknowledged the same  
in my jurisdiction aforesaid.

GIVEN under my hand and seal this 16<sup>th</sup> day of October, 2003.

My commission expires:

Embodied Hereon To My  
Commission of Virginia Notary Public Seal  
by G. E. Keefe Expires October 31, 2003  
SALLY E. KEEFER

[Signature]  
Notary Public

<input type="checkbox"/>	Other
<input type="checkbox"/>	Public File
<input type="checkbox"/>	File
<input type="checkbox"/>	Applicant

RECORDATION COVER SHEET

TYPE OF INSTRUMENT: DEED OF OPEN SPACE EASEMENT

DATE OF INSTRUMENT: May 6, 2004.

NAMES OF GRANTORS: LVE III HOMEOWNERS ASSOCIATION, INC.

NAMES OF GRANTEEES: BOARD OF SUPERVISORS OF LOUDOUN  
COUNTY, VIRGINIA

COUNTY WHERE PROPERTY  
LOCATED: LOUDOUN

ELECTION DISTRICT WHERE  
PROPERTY LOCATED: DULLES

BRIEF DESCRIPTION  
OF PROPERTY: LOUDOUN VALLEY ESTATES, PHASE III,  
SECTION 2, PARCELS C, D, E, F & G

COUNTY FILE NO.:

THIS INSTRUMENT PREPARED BY: WILLIAM A. FOGARTY

RETURN TO: WALSH, COLUCCI ET AL  
2200 CLARENDON BLVD., SUITE #1300  
ARLINGTON, VA 22201

DEED OF OPEN SPACE EASEMENT

THIS DEED OF OPEN SPACE EASEMENT, ("Deed") made this 6th day of May, 2004, between LVE III HOMEOWNERS ASSOCIATION, INC., a Virginia nonstock corporation ("Grantor") and the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, a body corporate and politic (the "County").

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of those certain tracts of land, located in Dulles Election District, Loudoun County, Virginia, described as Open Space Parcels C, D, E, F & G, Loudoun Valley Estates, Phase III, Section 2 (the "Property"), which were conveyed to Grantor by instrument of record in the Clerk's Office of the Circuit Court of Loudoun County, Virginia, recorded contemporaneously herewith; and

WHEREAS, the Property is not subject to the lien of any deed of trust; and

WHEREAS, the Property has agricultural, scenic, natural and aesthetic value in its present state as a natural and rural area which has not been subject to development; and

WHEREAS, in furtherance of the purposes of the Open Space Land Act, Title 10.1, Chapter 17 of the Virginia Code, and as required by Section 2-507 of the Zoning Ordinance and pursuant to County Subdivision Application # SBRD 2002-0135, the Grantor is willing to grant a perpetual Open Space Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and the County is willing to accept such Easement; and

WHEREAS, the Grantor and County recognize the agricultural, scenic, natural and aesthetic value of the Property in its present state, and have, by the conveyance of an Open Space Easement to the County, a common purpose of conserving the natural and cultural values of the Property, preserving the dominant agricultural, woodland and wetland character

of the Property, and preventing the use or development of the Property for any purpose or in any manner which would conflict with the maintenance of the Property in its scenic, agricultural, woodland and wetland condition or with purposes of the Open Space Land Act; and

WHEREAS, the County is authorized by the Open Space Land Act to accept, hold, and administer Open Space Easements, and possesses the authority to accept and is willing to accept this Open Space Easement under the terms and conditions hereinafter described.

NOW, THEREFORE, for good and valuable consideration, receipt of which all parties acknowledge, and in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the County and its successors and assigns forever and in perpetuity an Open Space Easement (the "Easement") of the nature and character and to the extent hereinafter set forth over the Property, the purposes of which are to preserve the environment of the Property, as more particularly bounded and described on Plat number 1228.22017, dated 8/22/02, and revised through 4/29/04, entitled "Record Plat Loudoun Valley Estates Phase III Section 2" and prepared by Eastern States Engineering of Dulles, Virginia, certified land surveyors which is attached to a Deed of Dedication, Subdivision, Easement, Conveyance, Vacation and Supplementary Declaration recorded immediately prior hereto (the "Plat"), and to maintain permanently the natural and cultural values and the dominant scenic, agricultural, woodland and wetland character of the Property.

To achieve these objectives, the terms, conditions, and restrictions of this Open Space Easement are hereinafter set forth.

1. This Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable and runs with the lands as an incorporeal interest in the Property enforceable with respect to the Property by the County, against the Grantor and its successors and assigns.

2. No industrial or commercial activities, with the exception of farming, forestry and activities that can be conducted from residential or farm buildings without significant alteration of the external appearance of the buildings as initially constructed, shall be conducted on the Property. Sales by the owner of farm products to the public shall be permitted.

3. Except as related to farming, and as otherwise provided herein, no billboard or advertising material shall be erected on the Property.

4. Except as may be necessary for and accessory to the agricultural and forestry uses of the Property, there shall be no dumping of soil, trash, ashes, garbage, waste, or offensive material. There shall be no dumping or filling in of any pond, wetland or waterway except as may be permitted by applicable laws for the purpose of combating erosion. Accumulation of trash, refuse, junk, sludge or other unsightly material is not permitted on the Property.

Notwithstanding the foregoing provisions, there shall be no dumping, storage or placement on the Property of any stumps, brush, grass or other land clearing debris from off-site.

5. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal and other materials are prohibited, except as necessary for:

- (a) Application of good farming and forestry practices;
- (b) Maintenance of existing accesses;
- (c) Construction and maintenance of farm accesses and accesses to structures permitted within the provisions of this Deed; provided, however, that accesses shall be designed and constructed to cause a minimum of interference with the existing topography, drainage, vegetation, wildlife, and conservation purposes of the Property; and

6. Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except for:



- (a) Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted within the provisions of this Deed; or
- (b) Application of good husbandry practices including the prevention or treatment of disease; or
- (c) Periodic selective harvest of marketable timber under the supervision of a registered forester; or
- (d) Furtherance and perpetuation of the agricultural, horticultural, silvicultural and naturalistic uses of the Property.

All forestal management activities shall be in accordance with sound forestry management guidelines promulgated by the Society of American Foresters for natural forests and plantations. All forestry practices shall serve the dual purpose of:

- (i) Protecting the soils, drainage and water quality of the Property; and
- (ii) Enhancing the sustainable growth and quality of the tree species suited to the site.

7. There shall be no activities or uses detrimental or adverse to water conservation, erosion control, soil conservation and, subject to the primary uses of farming and forestry, the preservation of wildlife habitat.

8. No building, facility or other structure shall be erected or constructed on the Property unless such structure is a new structure which is designed, constructed and utilized in connection with and accessory to the continued agricultural, horticultural, silvicultural and naturalistic uses of the Property.

9. Development of the Property shall not be permitted except as provided in this easement.

10. The property subject to this Easement shall not be further subdivided.

11. Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to itself, its successors and assigns the right to:

- (a) Continue the agricultural, forestry and naturalistic uses of the Property.

- (b) Continue to hunt, fish or trap on the Property subject to relevant laws.
- (c) Improve, repair, restore, alter, remodel or replace the existing and permitted structures with structures of similar size and purpose provided that the changes are compatible with the conservation purposes of the Property and all other provisions of this Easement.
- (d) Continue the use of the Property for all purposes not inconsistent with this Easement.

12. The parties agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions herein contained, and therefore, in the event that the Grantor, its successors or assigns, violate or breach any of such terms, conditions and restrictions herein contained, the County, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Property to its prior condition.

The County, its successors and assigns, by any prior failure to act shall not waive or forfeit, and shall not be deemed to have waived or forfeited, the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement.

13. The County, its successors and assigns, shall have the right, with reasonable notice, to enter the Property one time per annum for the purpose of inspecting the Property to determine whether the Grantor, or its successors, or assigns, are complying with the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of the dwellings.

14. It is the intention of the parties hereto that this Easement, which is by nature and character negative in that the Grantor has restricted and limited its right to use the subject Property rather than granted any affirmative rights to the County except as otherwise set forth herein, be construed at all times and by all parties to effectuate its terms, conditions and purposes. The County may assign its rights under this Easement to any state or federal agency charged with the responsibility of conservation of natural or farm areas, or to any

non-profit, tax-exempt organization engaged in promoting conservation of farm or natural areas; and if such assignee shall be dissolved or shall abandon this easement or the rights and duties of enforcement herein set forth, or if proceedings are instituted for condemnation of this easement, the easement and rights of enforcement shall revert to the County; and if the County shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Court shall appoint an appropriate successor.

15. The Grantor agrees for itself, its successors and assigns to send in writing to the County the names and addresses of any parties to whom any portion of the property subject to this Easement is to be transferred at the time said transfer is executed.

16. The County agrees to hold this Easement exclusively for conservation purposes, i.e., it will not transfer the Easement in exchange for money, other property, or services, except as provided in and permitted by the Open Space Land Act.

17. This Easement shall be construed to promote the purposes of the Virginia Open Space Land Act, to promote the Comprehensive Plan of Loudoun County, and to promote the conservation purposes of this Easement.

18. Although this Easement in gross will benefit the public in ways recited above by encouraging and requiring elements of good land management, nothing herein shall be construed to convey a right to the public of access or use of the Property, and the Grantor, its successors, and assigns shall retain exclusive right to access and use.

19. Notwithstanding any other provision of this Deed of Open Space Easement, the Loudoun County Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon the Grantor, but also its agents, personal representatives, heirs, assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the above described land.

The undersigned warrants that this Deed is made and executed pursuant to authority properly granted by the charter, bylaws and action of the Board of Directors of the Grantor.

IN WITNESS WHEREOF, the Grantor and County have hereunto set their hands and seals in the day and year above written.

GRANTOR:

LVE III HOMEOWNERS ASSOCIATION,  
INC.

By: [Signature] (SEAL)  
Name: John T. Meagher  
Title: Vice President

COMMONWEALTH OF VIRGINIA  
COUNTY OF Loudoun, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that John Meagher as Vice President of LVE III HOMEOWNERS ASSOCIATION, INC., whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 6<sup>th</sup> day of May, 2004.

My commission expires:

August 31, 2005

[Signature]  
Notary Public

Accepted pursuant to Virginia Code  
Section 15.2-1803

APPROVED AS TO FORM:

THE BOARD OF SUPERVISORS OF  
LOUDOUN COUNTY, VIRGINIA

[Signature]  
ASSISTANT COUNTY ATTORNEY

By: [Signature]

Title: Chairman

COMMONWEALTH OF VIRGINIA  
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby  
certify that SCOTT K. YORK as CHAIRMAN  
of the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, whose name  
is signed to the foregoing Deed, appeared before me and personally acknowledged the same  
in my jurisdiction aforesaid.

GIVEN under my hand and seal this 21<sup>ST</sup> day of MAY, 2004.

My commission expires:

SANDRA A. TRUSLOW  
NOTARY PUBLIC, STATE OF VIRGINIA  
COMMISSION EXPIRES APRIL 30, 2005

[Signature]  
Notary Public